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REPORT FROM THE OTTAWA ROUNDTABLE FOR THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (ICISS)

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Canadian Centre for Foreign Policy Development

January 15, 2001
Ottawa, Ontario, Canada

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January 15, 2001
Ottawa, Canada

The Ottawa Roundtable, organised by the Canadian Centre for Foreign Policy Development in partnership with the ICISS Secretariat, was the first in a series of consultations for the Commission's work and final Report (to be submitted to the Secretary-General of the United Nations by September 2001). The Ottawa Roundtable brought together Canadian-based experts, academics, NGOs, and government representatives to share ideas, address key issues, and to inform the work of the Commission. Among the participants were Gareth Evans (ICISS Co-Chair), Mohamed Sahnoun (ICISS Co-Chair), Gisèle Côté Harper (ICISS Commissioner), Lieutenant-General Romeo Dallaire, Pierre Duplessis (Secretary General, Canadian Red Cross), Kim Carter (Canadian Council for International Law), and Denis Stairs (Dalhousie University). The roundtable was co-chaired by Steven Lee (Canadian Centre for Foreign Policy Development) and John English (University of Waterloo). The next consultations will be held in Geneva (January 31, 2001) and in London (February 3, 2001).

This report is a synopsis of key themes discussed during the roundtable, they included:

1. The background and likely contentious issues for the ICISS
2. Grappling with the concept of intervention
3. Assessing and measuring the threshold principles for interventions
4. A trigger and enforcement mechanisms for interventions
5. The discourse of interventions: re-conceptualising national interest
6. The key actors: great powers, middle powers, civil society, and the media
7. The legal, constitutional, and operational challenges to interventions
8. The international political economy of interventions
9. Conclusions: focus on prevention and long-term approaches

Some of the specific ideas were:

- Interventions should be categorised along a "continuum of possible actions" (from prevention to a full scale military operation).
- "Armed humanitarian" interventions could win international support if they were limited, focussed, and aimed at the protection of human beings.
- A "conflict certification system" could be developed and administered by an independent body to measure the events (actions) against threshold principles for intervention.
- "National interest" should be broadened to include people-focussed considerations.
- Middle powers, such as Canada, could be at the forefront of armed interventions, with the

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U.S. as a somewhat remote partner.

- Like-minded middle powers should better coordinate their efforts to build an interventions regime.
- A new contract should be drawn between the state and the army in order to adequately involve the military in interventions or conflict resolution.
- There is a need for a unified plan, beyond the military strategy, which would coordinate the diverse actors involved in a complex peace operation.
- A carrot should be used to address roots of conflict rather than a stick: forgiving the debt of the poorest countries could be an effective "economic" intervention.
- A concept of "subsidiary" should be developed to address the problem of financing interventions locally.
- The socio-economic impacts of sanctions should be reassessed.
- There is a need to focus on prevention, rather than short-term fixes.
- Interventions should have a long-term horizon.

1. The Background and Likely Contentious Issues for the ICISS

In the opening presentation, the Commission Co-Chairs pointed to the salience and complexity of issues related to intervention. Dilemmas facing the Commission are daunting and include such intractable questions as: How should the international community act in cases of grave human rights abuses, keeping the lessons from Kosovo and other "less successful" interventions in mind? Should actions of the international community be rooted in the solidarity of human kind, should they stem from a moral duty to aid the victimised, or should they be founded on a set of solid legal obligations? Who has the authority to intervene and who is ultimately responsible and accountable for actions or inactions if the United Nations Security Council continues to be dysfunctional or paralysed? What are the appropriate criteria for action? What are the possible legal, political, and operational reasons *not* to intervene? What type of intervention, if any, should be taken in a particular situation?

As we mark the 10th anniversary of the Gulf War, we may also recall the failure of the international community to act as violence escalated in Somalia at the very same time, or Angola, where conflict raged for over 30 years before the recent intervention occurred. The law suit filed against the Canadian government for its involvement in bombing of Serbia makes us keenly aware that interventions have impacts at home as well. These considerations necessitate thinking about double standards, "official" justifications *versus* "hidden" agendas, legitimacy, and other issues. The hope of the Commission is to generate an inclusive international debate and attempt to narrow the divides that have surfaced around recent interventions and around international inaction.

Optimism about the impact of the final Report was expressed and seven factors that may contribute to the Commission's success pointed out:

1. The fact that the Commission was initiated by the Canadian government may be

significant since Canada's role in the world as a promoter of internationalism and as a foreign policy innovator is well recognised and respected. (The Canadian government's leadership and co-operation with the non-government sector during the Ottawa process to ban landmines and in the establishment of the International Criminal Court have become landmarks of what can be termed "New Diplomacy.")[1]

2. The Commission is geographically balanced with representation from the "North" as well as the "South" and consists of people with diverse views and expertise in political, legal, ethical and operational matters.
3. The Commission has a strong research base and plans to draw on the body of work that already exists. The final Report will be a concise document of 50 to 80 pages, easily accessible to practitioners, the public, and the media. It will be accompanied by 2 other volumes. The first consisting of specially commissioned research reports and the second of the best selected writings, including an annotated bibliography (which will also be available on a CD-rom).
4. The broad involvement of NGOs, academics, experts, government officials, and others at roundtables around the world may also contribute to the impact of the Commission's work.
5. The nature of the Report is another factor. The ICISS final Report will be succinct and accessible. It may draw on the Bruntland Commission's approach – to re-frame a concept in order to build consensus on a divisive issue. In that report the chasm between environmental concerns and mainstream theories of economic growth was bridged by inventing a new concept of sustainable development. Perhaps, the ICISS could achieve a similar objective. It could, for instance, attempt to re-frame (broaden) the concept of national interest or look at intervention from the victim's point of view rather than the view of the perpetrating or the intervening party. Changing the discourse of intervention may constitute a great step forward.
6. The scope of the Commission's work may be another winning factor. The Commission aims to bridge legal, operational, moral, and political dimensions of intervention, recognising the persistence of realpolitik thinking among state officials.
7. The Commission plans to engage in a systematic follow-up to ensure a lasting impact of the Report.

The Commission Co-Chairs thanked the Canadian government and Foreign Affairs Minister Manley for their continued support. DFAIT officials emphasised the need to come to grips with the changing nature of conflict and its impact on civilians. They also drew attention to the need to build bridges across the deeply divided debate on interventions and commended the Commission on its aims.

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[1]See CCFPD, *Report from the Conference on "New Diplomacy: the United Nations, Like-minded Countries and Non-governmental Organisations,"* Millcroft Inn, Ontario, Canada, September 28-30, 1999 (Policy Report no. 1011.6E).

During the opening discussion a doubt was cast over the potential impact of the Commission's final Report in light of the new Bush administration and its apparent unwillingness to engage the U.S. in interventions. While some argued that such a U.S. position would perpetuate deadlock at the UN Security Council, others expressed more optimism about the likely inability of the Bush administration to flatly refuse U.S. involvement in the face of a large scale humanitarian (or human rights) crisis abroad. Pressure will likely accumulate to maintain a constructive role for the U.S. in Africa and elsewhere. There are other actors shaping U.S. foreign policy besides the administration, including the Congress and a range of civil society groups. It was noted that the popular vote in the 2000 U.S. elections went to Al Gore, who supported American engagement abroad.

2. Grappling with the Concept of Intervention

Concern was raised about labelling armed interventions "humanitarian." While the ultimate goal of a military exercise may be humanitarian, the means rarely are. Objections were raised to a suggestion to label interventions "protective" – a term that would undoubtedly be interpreted as neo-colonial and as similar to the now defunct "protectorate." However, a point was made not to completely abandon the adjective "humanitarian," since there may be cases where the use of armed forces is justifiable on humanitarian grounds. In this context, it would be useful to distinguish between an "armed humanitarian" intervention and a "just war." While the former should aim squarely at protecting human safety, the latter can be waged for political purposes. (In this sense, the Gulf War could be rationalized within the "just war" doctrine, at least rhetorically.)[2] International support for a consistent "armed humanitarian" intervention regime could be built in the context of limited and focussed actions aimed singularly at the protection of human safety.

One example where the use of armed forces could be justified on humanitarian grounds is the prevention of air attacks by the Sudanese government against its own population. Intervention in this case would alleviate a massive humanitarian crisis without grave political implications and without the need for significant resources. Another example of a possible "armed humanitarian" intervention could be the prevention of the spread of hate propaganda in the face of mounting genocidal tendencies or human rights abuses. While these kinds of interventions would not be systemic, they would enhance the safety of human beings in grave situations.

At the same time, a case was made for simply being more specific. For instance, interventions could be categorised along a continuum of possible actions (prevention ↔ full scale military operation). On this continuum, the incidence of "armed humanitarian"

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[2]See CCFPD, *Report from the Roundtable "Just War and Genocide,"* Ottawa, December 8-9, 2000 (Policy Report no. 1011.8E)

interventions would be quite small. Another distinction is to be made between intervening in response to human rights abuses and in response to cases of failed states. While the first may require a full scale military intervention, in the latter case such an intervention would likely do more harm than good. The need to develop policing and other conflict resolution skills was raised in this context. While there was a broad support for keeping the concept of interventions narrow and specific, some asked whether this is a mistake. Some Africans, for instance, perceive interventions in the name of democracy as more viable than those made on behalf of desperate people.

The timing of interventions was also noted. Earlier intervention in Kosovo, for example, could have resulted in a more inclusive government today. Sending troops in after a conflict has already started is often too late. People who are affected will likely not overcome their trauma and the perpetrators will likely continue to fight, since they have nothing to loose. In general, intervention should start before conflict erupts.

3. Assessing and Measuring the Threshold Principles for Interventions

Attention was drawn to three threshold principles, which must be satisfied in any legitimate claim to humanitarian intervention, identified in a report by the *Independent International Commission on Kosovo*. According to the Commission:

> These principles include the suffering of civilians owing to severe patterns of human rights violations or the breakdown of government, the overriding commitment to the direct protection of the civilian population, and the calculation that the intervention has a reasonable chance of ending the humanitarian catastrophe.
>
> (http://www.kosovocommission.org/reports/1-summary.html)

A point was raised that the consensus on the threshold principles does not pose as much challenge as the measurement of events (actions) against them. While there is a nascent understanding that states have an obligation to intervene in certain circumstances, it is not entirely clear by which means and to what extent. Without a measuring mechanism, legitimacy will remain problematic. A conflict certification system could perhaps be developed and administered by an independent body, such as the ICISS. Some doubted that the constraints to interventions are likely to be overcome by codifying or certifying the threshold principles. They argued that the international community is simply not ready to build an automated interventions regime. Instead, decisions will continue to be made at the political level, at least until constituencies within democratic states consistently demand their governments to act abroad and become willing to divert resources for such purposes.

4. A Trigger and Enforcement Mechanisms for Interventions

The question of a trigger mechanism for interventions was briefly addressed. Someone asked whether it was effective to locate such a mechanism at the UN Security Council, especially in cases when the perpetrators themselves are represented. An appeal was made to develop triggers that could hinder plans for genocides or for massive human rights abuses.

The potential for a multinational UN standing force and the use of mercenaries in armed interventions were also raised.[3] However, doubts were expressed as to the legitimacy and effectiveness of both: Who would command and deploy such a UN force? To whom would the UN soldiers be loyal? Who would pay the mercenaries and to whom would they be ultimately responsible? A suggestion was made that it is immature to discuss the nature of a trigger and enforcement mechanism until consensus in reached on key, issues including:

- assessing and measuring events (actions) against threshold principles,
- legitimacy, legality, and financing of interventions,
- the constituency of the international community.

5. The Discourse of Interventions: Re-conceptualising National Interest

The Commission Co-Chairs identified the traditional concept of national sovereignty as a key constraint to building an intervention regime. There is a need to broaden the concept beyond the traditional, realist definition. It may be in the interest of states to intervene in defence of human rights (and other) abuses and build a "good reputation" internationally. In addition, the spill-over effect from humanitarian crises abroad, such as, the influx of refugees, should be naturally included when calculating what constitutes national interest. States should understand that in many cases, intervention is in their national interest. This is especially true if their own societies support such actions.

Re-conceptualising national interest to include human rights could be particularly effective in addressing the paralysis at the UN Security Council. As some pointed out, it is not so much the institution that poses challenges to building the intervention regime, but the positions of some member states. These positions are rooted in the narrow, traditional concept of national security and do not lend themselves to human-focussed considerations. The option is either to persuade the big powers to act within the human security framework or leave the conduct of interventions to middle powers, which seem more able to adopt human security interests as a national or "civilisational" aim.

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[3]See Peter Langille, *Renewing Partnerships for the Prevention of Armed Conflict: Options to Enhance Rapid Deployment and Initiate a UN Standing Emergency Capability*, Fall 2000 (CCFPD Policy Paper no. 1004.5E).

6. The Key Actors: Great Powers, Middle Powers, Civil Society, and the Media

It was noted that large scale U.S. involvement in interventions may do more harm than good. One American casualty may mean the collapse of a mission and a loss of credibility for all involved. It could be the role of middle powers, such as Canada, to be at the forefront of an armed intervention, with the U.S. as a somewhat remote partner. While the success of an intervention does not necessarily rest on the physical presence of the Americans, it is necessary for the U.S. to contribute resources and moral support. The need to explore how to engage the Chinese government in the debate on interventions (and beyond) was also raised. Some emphasised the key role of regional powers in maintaining peace and stability in their own "backyards."A point was made that despite the bickering at the international community level, the people on the ground really do not care who helps them.

A reminder was made that not all middle powers are alike. Nevertheless, those coalitions which are "like minded" could do a lot more to coordinate their efforts. While this might not be so challenging, coming up with the sufficient resources to build an intervention regime, just might. Maintaining "intervention-autonomy" could also prove challenging for the small and medium-size countries. Canada should be particularly careful not to become entirely militarily dependent on its southern neighbour so that it can continue playing a constructive middle power role internationally.

Many participants stressed the role of civil society in galvanising government action. Some suggested that the link between national interest and public attitudes be further explored. While governments may be extremely cautious, opinion polls show large public support for interventions and the UN system, even in the U.S. It is likely that the public would be prepared to accept military casualties if policy and decision makers communicate well the goals of an intervention. Others were sceptical about the "cult of civil society," pointing to Adolf Hitler's own societal manipulations during the Second Word War.

The powerful role of the media in raising public awareness and in motivating international compassion was also acknowledged. Some journalists pointed out that facilitating safe media access to conflict zones would be beneficial to their work. The need for consistent, long term coverage of issues and conflict areas was noted.

7. The Legal, Constitutional, and Operational Challenges to Interventions

A "tragic flaw" in the UN Charter was pointed out when assessing the legal framework for interventions. The flaw stems from two contradictory concepts at the foundation of the UN Charter: one is territorial integrity and political independence of the member states, the other – universal human rights. While the body of international humanitarian and human rights law grew steadily since the inception of the Charter, it was not until the end of the Cold War and two genocides (Great Lakes and Bosnia) that the principle of human integrity began to challenge that of state sovereignty. This tendency can be seen, for instance, in the creation of the Ad Hoc

Tribunal to Prosecute War Crimes in the Former Yugoslavia, which also assumed jurisdiction for War Crimes in Rwanda, the establishment of a permanent International Criminal Court, the Augusto Pinochet extradition case, and finally NATO's intervention in Kosovo. However, at the same time as the body of international humanitarian and human rights law begins to bear fruit, there is concern and cynicism about the legitimacy of interventions. Thus, the old notions of national interest, inherently rooted in territorial sovereignty, have to be squared with a new international legal framework that includes recognition of individuals with the protection of human rights.

A suggestion was made, that the main constraint to building an intervention regime within the community of democratic states is constitutional. In this context, there are only two instances where intervention is justifiable: either, a case has to be made that the intervention abroad is in the interest of the folks at home, or the government has to be able to point to its constituency's demand for intervention abroad. In the absence of either, intervention is unconstitutional. Others challenged this assessment, arguing that, technically, international law is self-executing. Some flatly disagreed, insisting that intervention is a political rather than a constitutional matter.

A number of operational challenges to interventions was raised. An argument was made that in order to involve the military in interventions or conflict resolution, a new contract has to be drawn between the state and the army. Not only does the military require a different skills set, the concept of fighting for an idea, rather than in defence of a native country, has to be internalised and casualties must be accepted. In this context the low tolerance levels in democracies for casualties and unwillingness to sacrifice life in far away places was raised. The lack of proportionality between the casualties of (mostly) Western armies and those of (mostly non-western) civilians was highlighted. How many Somali lives is one American life worth?

Others also recognised the need for a unified plan, beyond the military strategy, which would coordinate the diverse actors involved in a complex peace operation today. It was emphasised that the goals of an intervention should be clearly specified in advance (i.e., whether the goal of an intervention is to protect moderates from hard liners, to separate conflicting factions, or to prevent child conscription). The necessity to pay attention to context, especially during the transition period, was stressed. It is often key to be able to communicate in the native language on the ground. Moreover, transitional, longer-term programmes should be developed and administered by the local people, rather than by a distant foreign authority.[4]

Obstacles to the delivery of humanitarian aid in countries such as Sudan or Rwanda were raised by humanitarian NGOs. A point was made that the climate for open discussions between

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[4]See CCFPD, *Report from the Roundtable on Expert Deployment to International Peace Operations*, Ottawa, September 12, 2000 (Policy Report no. 1006.12E)

donors and developing countries, including India, about aid and development has deteriorated in the recent past. The difficulty of addressing civilian protection and other human security issues in the context of an elite society was also noted. Somebody asked whether there are different degrees of compassion felt by the Western observers depending on which group is afflicted. Could it be that racism plays a role in determining whether to intervene or not? Other questions surfaced in the context of this discussion: What is to be done if efforts aimed at relieving massive human suffering are stopped by a manipulative regime? What is the impact of humanitarian interventions (i.e., relief efforts) on complex societies in conflict?

8. The International Political Economy of Interventions

A point was made that the Western emphasis on political rights and democracy is inadequate in the context of the "South." The most immediate human suffering in the developing world stems from economic deprivation, such as lack of water and work, rather than political persecution or the inability to vote. Participants were challenged to think about the IMF-administered economic austerity packages as interventions in their own right. The "West" has to accept responsibility for the impact they have on social and economic structures. In some instances, political conflicts resulted from the shortages caused by these austerity measures. An appeal was made to the use of a carrot rather that a stick. For example, forgiving the debt of the poorest countries could help address underlying economic problems. The Commission should consider "economic" intervention in response to massive human suffering, as well as military options.

The question of financing interventions was raised. What happens if countries with resources and capacity fail to intervene or to fulfill their commitments? What are the long term consequences of large-scale "humanitarian" intervention on a state's sovereignty and its ability to govern itself? To address these complex issues, a concept of subsidiary could be developed and conflicts resolved within their regional context, rather than by countries or organisations far removed from conflict zones.

A plea was made to reassess the socio-economic impacts of sanctions. Some participants argued that sanctions often hurt the vulnerable groups of society the most. More attention should be paid to how resources are redistributed within a society and how economic arrangements effect conflict.

9. Conclusion: Focus on Prevention and Long-Term Approaches

There was a broad agreement on the need to focus on prevention, rather than short-term fixes. Calls were made for efforts aimed at creating stable environments for development and addressing the root causes of conflicts. Interventions should have a long-term focus and engage the grass roots. A warning was made to those located in the "West" not to be overly optimistic about efforts to create liberal democracies in places with neither liberal nor democratic foundations. We should remember the consequences of engineering democracies in some

colonial and post-colonial countries in the past. A suggestion was made that the Commission draw on the work of the International Crisis Group.

In conclusion the roundtable Chair drew attention to issues for Canada:

- Canada could play a constructive role in conflict prevention and conflict resolution. Drawing on its experience at home with "living together," Canada could help spread the culture of tolerance and promote rule-based inclusive societies abroad.
- As a middle power with a moral clout, Canada could play a role in bridging ideological and epistemological divides and in building a "universal" intervention regime.
- Canada could draw on the like-mindedness of its middle power counterparts and develop a multilateral framework for these efforts.

The Commission Co-chairs assured participants of the impact of their ideas on the Commission's work and thanked them for their support. The roundtable Chair further pointed to the enormous value such public consultations have for the development of Canada's foreign policy and encouraged follow-up project proposals to the CCFPD.

International Commission on Intervention and State Sovereignty

Ottawa Roundtable Consultation

January 15, 2001

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